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No. 87-1260

In the Supreme Court of the United States

OCTOBER TERM, 1987

JESSE J. JOHNSON, PETITIONER

v.

ANN MCLAUGHLIN, SECRETARY OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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3 pp

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The judgment of the court of appeals (Pet. App. 14) in this civil action was entered on June 10, 1987. Petitioner filed a petition for rehearing and a supplemental petition for rehearing. The court of appeals denied the supplemental petition for rehearing on August 5, 1987 (*id.* at 10). The time for filing a petition for a writ of certiorari expired on November 3, 1987. 28 U.S.C. 2101(c). The petition was not filed until December 22, 1987, and therefore is out of time.* The time limit provided by 28 U.S.C. 2101(c) is jurisdictional. *Department of Banking* v. *Pink,* 317 U.S. 264 (1942). Accordingly, this Court lacks jurisdiction over the petition.

* Following issuance of the mandate of the court of appeals on August 13, 1987, petitioner, acting pro se, made two subsequent requests: (1) he requested a trial de novo, which the court denied on September 29, 1987 (Pet. App. 12), and (2) he requested further consideration of his rehearing petition and publication of the per curiam,

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

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one-sentence denial of the supplemental petition for rehearing en banc (*id.* at 11). The court of appeals denied these motions on September 29, 1987 (*id.* at 1, 12). These untimely post-judgment requests did not extend the time within which to petition this Court for a writ of certiorari, because the court of appeals did not modify its earlier judgment when it denied petitioner's requests. *FTC* v. *Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211-213 (1952); see *FCC* v. *League of Women Voters*, 468 U.S. 364, 373-375 n.10 (1984).

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